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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/718,943	11/22/2000	Thomas Gassenmeier	H 4325	1228

7590 06/06/2005

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EXAMINER	
DOUYON, LORNA M	
ART UNIT	**PAPER NUMBER**
1751	

DATE MAILED: 06/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/718,943	GASSENMEIER ET AL.	
	Examiner	Art Unit	
	Lorna M. Douyon	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to ~~communication(s) filed on~~ *RCE filed on March 22, 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *10-12,14 and 15* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *10-12,14 and 15* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *09 October 2001* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 22, 2005 has been entered.

2. Claims 10-12, 14 and 15 are pending.

3. The rejection of claims 18 and 19 under 35 U.S.C. 103(a) as being unpatentable over Koyakumaru et al. (US Patent No. 5,489,399) is rendered moot in view of applicants' cancellation of these claims.

Drawings

4. The drawings are objected to because of the same reasons set forth in Form PTO-948 dated January 4, 2002 (as attachment to Paper No. 14). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the

brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 10-12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beaujean et al. (US Patent No. 5,505,875), hereinafter "Beaujean".

Beaujean teaches finely divided sodium percarbonate whose storage stability is improved by melt-coating of water-insoluble encapsulation agents (see abstract), such as long chain saturated carboxylic acids which usually contain up to about 24 C atoms (see col. 5, lines 31-34; 47-48). The protective layer around the percarbonate granule is usually applied in a proportion of at least about 1% by weight, preferably at least about 2% by weight but no more than about 15-20% by weight of the coating material, based on the finished product (see col. 9, lines 16-26). The finely divided sodium percarbonate has particle sizes in the range of about 0.1 to 2 mm

diameter, suitably between about 0.2 and 0.8 mm (see col. 9, lines 27-32). Beaujean, however, fails to specifically disclose coating the percarbonate with stearic acid, the amount of the stearic acid that is governed by the recited formula and the product having a stepped pH profile when contacted with water.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use stearic acid as the encapsulation or coating agent because this is one of the species of fatty acids (up to 24 C atoms) taught by Baujean and to optimize the proportions of the stearic acid through routine experimentation for best results. As to optimization results, a patent will not be granted based upon the optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the *prima facie* case of obviousness. See *In re Boesch,* 617 F.2d 272, 276, 205 USPQ 215, 219 (CCPA 1980). See also *In re Woodruff*, 919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). With respect to the stepped pH profile, it would have been obvious to one of ordinary skill in the art at the time the invention was made to reasonably expect the percarbonate product of Beaujean to behave similarly because same process steps and similar ingredients have been utilized.

7. Claims 10-12, 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brichard (US Patent No. 4,421,669).

Brichard teaches a process for the stabilization of sodium percarbonate particles (see claim 6) which comprises introducing a coating agent into a continuously operating fluidized bed

in the form of solid particles and maintaining the fluidized bed at a temperature between the temperature at which the coating agent begins to melt and this same temperature plus 20°C, with the solid particles of the coating agent having a diameter between 0.05 and 10 mm, the amount of coating agent being between 0.01 and 10% by weight of the peroxygen compound, the diameter of the percarbonate being between 0.01 and 2 mm, the coating agent being a wax having an initial melting point of between 50° and 90°C and selected from high molecular weight hydrocarbons, fatty acids and their derivatives, fatty alcohols and mixtures of these (see claim 1; col. 3, lines 40-43 and line 66; col. 4, lines 34-37). The flow rate of coating agent is generally between 0.01 and 50 g per minute and per liter of bed (see col. 4, lines 43-57). The fatty acids contain at least 10 carbon atoms, preferably saturated fatty acids containing 14 to 25 carbon atoms (see col. 2, lines 44-60). Brichard, however, fails to specifically disclose coating the percarbonate with stearic acid, the amount of the stearic acid that is governed by the recited formula, and the product having a stepped pH profile when contacted with water.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use stearic acid as the coating agent because this is one of the species of fatty acids taught by Brichard and to optimize the proportions of the stearic acid through routine experimentation for best results. As to optimization results, a patent will not be granted based upon the optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the *prima facie* case of obviousness. See *In re Boesch,* 617 F.2d 272, 276, 205 USPQ 215, 219 (CCPA 1980). See also *In re Woodruff*, 919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). With respect

to the stepped pH profile, it would have been obvious to one of ordinary skill in the art at the time the invention was made to reasonably expect the percarbonate product of Brichard to behave similarly because same process steps and similar ingredients have been utilized.

Response to Arguments

8. Applicants' arguments filed February 14, 2005 have been fully considered but they are not persuasive.

With respect to the obviousness rejection based separately upon Beaujean and Brichard, Applicants argue that these references fail to contemplate the novel formula or the stepped pH profile of the present invention because both Beaujean and Brichard are concerned with providing storage-stable percarbonate products but are not concerned with providing a percarbonate product with a stepped pH profile which occurs with the claimed invention, and neither reference even contemplates or mentions a pH profile.

The Examiner respectfully disagrees with the above arguments because even though Beaujean and Brichard are concerned with providing storage-stable percarbonate products but are not explicitly concerned with providing a percarbonate product with a stepped pH profile which occurs with the claimed invention, it would have been obvious to one of ordinary skill in the art at the time the invention was made to reasonably expect the percarbonate product of each of Beaujean and Brichard to behave similarly because same process steps and similar ingredients have been utilized.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicants' disclosure. The references are considered cumulative to or less material than those discussed above.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lorna M. Douyon whose telephone number is (571) 272-1313. The examiner can normally be reached on Mondays-Fridays from 8:00AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Lorna M. Douyon
Primary Examiner
Art Unit 1751